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CHAPTER 2

ENVIRONMENTAL REVIEW

I. OVERVIEW

The purpose of this chapter is to provide guidance on the environmental review process required under federal HOME regulations. These regulations (24 CFR § 92.352) require a formal assessment of possible environmental effects for each activity carried out with HOME funds. This assessment must be done according to requirements found in 24 CFR § 58. Environmental Review requirements under the HOME Program are the same as those for the CDBG Program. Changes were made to 24 CFR § 58 to clarify this matter. This chapter provides current rule requirements, and clarifies review responsibilities of MDOC, Local Governments, Public Housing Authorities, and CHDOs with regard to the environmental review process. For more detailed information, grantees may refer to 24 CFR § 58.

The HOME Program is also subject to the *Montana Environmental Policy Act* (MEPA) of 1971. MEPA is similar to the federal legislation governing the environmental review process in terms of its purpose. However, there are some differences in the procedures used to carry out the legislation. The Montana Department of Commerce (MDOC) HOME staff has prepared a consolidated form for achieving compliance with both state and federal requirements.

The flowchart in **Exhibit 2-C** summarizes the *environmental review process*. Completion of the environmental review process is mandatory before taking physical action on a site, or making a commitment or expenditure of HOME or non-HOME funds for property acquisition, rehabilitation, conversion, lease, repair or construction activities. “Non- HOME funds” means any other Federal, state, local, private, or other funds. Further, the Montana Department of Commerce will not release funds until it has approved the Request for Release of Funds and Certification (RROF) unless the activity has been determined exempt. Grantees should begin the environmental review process at the earliest possible time so that potential conflicts between program procedures and environmental requirements are identified at an early stage. Ideally, the environmental review process should commence as soon as a proposed site is identified.

The purchase of a real estate option on a property selected for HOME is excluded from environmental review requirements, provided the option agreement stipulates that the purchase of the property is subject to the successful completion of an environmental review. Funds for relocation assistance may be committed prior to the environmental review as well, when required.

Private citizens and organizations can object to the Request for Release of Funds (RROF) for HOME projects on certain procedural grounds relating to the environmental review process (24 CFR § 58.75). Therefore, it is important for each grantee to be diligent about

meeting all procedural requirements. For example, each grantee must maintain a written record of the Environmental Review undertaken under 24 CFR § 58 for each project. This written record is known as the Environmental Review Record (ERR), and must be available for public review.

A. RESPONSIBILITIES

The Montana Department of Commerce is authorized by HUD to administer environmental review compliance for grants made by the HOME Program. The Housing Assistance Bureau Chief approves the RROF that certifies compliance with Federal environmental laws and authorities. The Bureau Chief may disapprove the RROF if one or more of the permissible bases for objection apply in accordance with §58.75, or if HUD or the State has knowledge that the responsible entity has not complied with the items in §58.75 or that the RROF and certification are inaccurate, in accordance with §58.72. Upon expiration of the 15 calendar day comment period, the Bureau Chief shall approve the RROF and issue a Release of Funds unless there is a basis for disapproval.

Local governments receiving HOME funding will be the Responsible Entity (RE) in charge of completing the Environmental Review Record (ERR) and submitting their RROF to MDOC. The RE shall not acquire, demolish, move, rehabilitate, convert, lease, repair or construct property, or commit or expend HUD or non-Federal funds for HOME activities with respect to any eligible property, until the environmental review process has been completed.

CHDOs and PHAs receiving HOME funding must have a local government conduct the environmental review for them. The ERR and RROF will be submitted to MDOC for approval.

II. ENVIRONMENTAL REVIEW REQUIREMENTS

No funds will be committed to a HOME project before the completion and approval of the Environmental Review Record (ERR). The RE should initiate the environmental review process as soon as the activity is identified in order to avoid delaying its implementation. Environmental reviews can even be completed before the contract between the grantee and MDOC is signed.

The ERR must provide a description of the project and all project activities, as defined in 24 CFR § 58.2 and § 58.32. The ERR must contain all the relevant documents, public notices, and written determinations required by 24 CFR § 58, and any other information or evidence of action pertaining to the environmental review of the project. It is the grantee's responsibility to compile the ERR.

An ERR is valid for 5 years. Projects funded with program income and/or CHDO proceeds after project completion and grant closeout must still comply with HOME environmental review requirements. Reinvestment of program income after five years from the date of initial release of grant funds requires a new or re-evaluated ERR. See Chapter 2, Section II-

D of this chapter for more information on reevaluations. For further information on program income/CHDO proceeds, see Chapter 3, Section II and Chapter 9, Part II, Section II.

The discussion in this section follows the flowchart as shown in **Exhibit 2-C**.

A. ENVIRONMENTAL CERTIFYING OFFICIAL

The first step of the environmental review process is to designate an individual to serve as the Environmental Certifying Official (ECO). For local governments, this individual will be the mayor, city manager, chair of the county commissioners, or other chief elected official. See **Exhibit 2-D1** for a sample designation letter. For CHDOs and Public Housing Authorities, the local government that agreed to perform the environmental review will provide the name of the ECO.

In either case, if someone other than an elected official is designated as the ECO, a local government resolution is required to designate an ECO. The resolution may be done by motion at an official meeting. A record of the meeting must be provided. A sample resolution designating an ECO is provided in **Exhibit 2-D2**. Refer to **Exhibit 2-D3** for sample resolution designating an individual or position in local government as ECO for all federal programs, including HOME.

B. EXEMPTION FOR ADMINISTRATIVE ACTIVITIES

The next step is submittal of the *Finding of Exemption for Administrative Activities* (**Exhibit 2-E**). Activities classified as "exempt" under 24 CFR § 58.34 may be commenced prior to an environmental review. Exempt activities include environmental/engineering/design costs, information and financial services, administrative and management activities, inspections and testing of properties for hazards or defects, purchase of insurance, and assistance for improvements that do not alter environmental conditions and are limited to emergency repairs.

Example: A Grantee hires an architectural firm to design HOME-assisted new construction apartments. This use of HOME funds is exempt under §58.34(a)(8).

The ECO designation and the Finding of Exemption for Administrative Activities should also be included in the ERR along with other applicable exhibits, as detailed in the following sections.

C. POSSIBLE ENVIRONMENTAL DETERMINATIONS

All grantees will prepare and submit a completed environmental review record (ERR) to MDOC prior to the release of grant funds. The ERR contains all documentation pertaining to the environmental review. See **Exhibit 2-A** for an example of the summary pages in an ERR for a project categorically excluded. **Exhibit 2-B** lists the related Federal laws and authorities identified in 24 CFR § 58.5. Only one, Coastal Zone Management, is not applicable to HOME projects in Montana; all other laws and authorities **must be addressed in full**.

Exhibit 2-F lists a variety of HOME activities and the typical environmental determinations for the activity. When activities are reviewed, the possible determinations are:

- 1) Categorical exclusions not subject to related laws and authorities
- 2) Categorical exclusions subject to related laws and authorities
- 3) Categorically excluded activities converted to exempt activities
- 4) Environmental Assessment (EA)
- 5) Environmental Impact Statement (EIS)

1. Categorical Exclusions not subject to §58.5 Laws and Authorities

Activities that are categorical exclusions not subject to §58.5 laws and authorities include the following:

- 1) **Tenant-Based Rental Assistance (TBRA)** per the authority of Section 58.35(b)(1).
- 2) **Homebuyer Assistance** for units not already under construction or involving rehabilitation, per the authority of Section 58.35(b)(5). Activities in this category are those to assist homebuyers to purchase existing dwelling units or dwelling units already under construction, including closing costs and down payment assistance, interest buy downs, and similar activities that result in the transfer of title. The grantee will complete an abbreviated site-specific checklist, **Exhibit 2-M1**, as homes are identified to receive funds.

Homebuyer assistance for units not already under construction or involving rehabilitation must be treated as a categorical exclusion subject to the Federal laws and authorities cited in §58.5 (**Exhibit 2-B**). Refer to the next section.

These activities are treated like exempt activities. The RE is not required to document that the activities comply with other Federal laws and authorities found at §58.5 (**Exhibit 2-B**). Publication of a Notice of Intent (NOI) is not necessary, and a RROF is not submitted to HOME. The RE must document its determination that the activity is a categorical exclusion not subject to §58.5 authorities (**Exhibit 2-G**), and include the determination in the Environmental Review Record submitted to MDOC.

Required Exhibits:

Exhibits 2-A, 2-D, 2-E, and 2-G.

Homebuyer Assistance also requires Exhibit 2-M1.

2. Categorical Exclusions subject to §58.5 Laws and Authorities

Activities under this category meet the criteria for a Categorical Exclusion subject to §58.5 Laws and Authorities unless an extraordinary circumstance as defined in §58.2(a)(3)

occurs. If such a circumstance exists, an EA is required. If your project does not meet the following criteria, an EA is required. Activities under this category include:

- 1) **Single-Family Rehabilitation** if the activity involves a one- to four-family dwelling and the density is not increased beyond 4 units, the land use is not changed, and the footprint (if in a floodplain or wetland) is not increased, per the authority of Section 58.35(a)(3)(i).

If the specific sites are not known in advance for a homeowner rehabilitation program, the environmental review factors under consideration are those that can be addressed without knowing a particular site or sites. When specific sites are identified, complete and submit **Exhibit 2-M2**.

- 2) **Multi-Family Minor Rehabilitation** if the unit density does not change more than 20 percent, the land use does not change, and the estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation, per the authority of Section 58.35(a)(3)(ii).
- 3) **Single-Family New Construction** (per Section 58.35(a)(4)) if the project involves an individual action on a one- to four-family dwelling, or five or more units on scattered sites more than 2,000 feet apart, with no more than four units on any one site.

An environmental assessment is required if the lot previously had or currently has a structure on it with a residential density different from the proposed project, or if the project involves a change in land use (non-residential to residential). Grantees should be aware that new construction projects are likely to trigger at least one federal or state environmental law or statute.

- 4) **Acquisition** of an existing structure or vacant site provided that the structure or land acquired will be retained for the same use and involving no more than four dwelling units, per Section 58.35(a)(5).

This differs from homebuyer assistance in that the grantee purchases the property with the grant funds, rather than individuals who use grant funds for down payment or closing cost assistance. Vacant land may only be purchased using HOME funds for development of HOME-assisted housing units; land banking is not allowed under the HOME Program.

If the project involves acquisition of single-family residences or vacant lots on scattered sites, site-specific checklists (2-M1) must be submitted. Acquisition of five or more units undertaken as a single action (e.g., a subdivision) and located within 2,000 feet of each other is not categorically excluded, and requires an Environmental Assessment.

- 5) **Infrastructure for HOME Projects** are categorically excluded subject to §58.5 if the facilities or improvements replace or upgrade existing facilities or improvements with

only a minimal change in use, size capacity or location (e.g., replacement of water or sewer lines, reconstruction of curbs or sidewalks, repaving streets); or the facilities and improvements are consistent with the use of that site and the action will not change the use, size, capacity, or character of the site (e.g., landscaping, street furniture, play equipment for established parks and playgrounds).

If during the environmental review it is determined that there are no circumstances that require compliance with any other federal laws and authorities (from **Exhibit 2-B**), then the project converts to Exempt (See the section on Categorical Exclusions that convert to Exempt activities). The grantee is not required to publish a Notice of Intent (**Exhibit 2-N**) to submit a certification and RROF to MDOC.

If federal laws or authorities are indeed triggered, the publishing requirements must be met, and a specific review of the triggered law or authority conducted. Of the ten applicable laws and authorities, HOME projects most often trigger the National Historic Preservation Act of 1966. **Exhibit 2-H** presents a sample notice to the State Historic Preservation Office (SHPO) to assist in gathering pertinent information. **Exhibit 2-I** provides additional information for grantees to use in dealing with historic preservation issues.

Laws regarding floodplains and wetlands can be triggered by rehabilitation activities, even on existing properties. **Exhibits 2-J, 2-K, and 2-L** provide specific information for dealing with projects involving wetlands or floodplains.

Documentation must be maintained in the ERR to back up the responses to the other federal laws referenced in **Exhibit 2-B**. If the specific sites are not known in advance for a homeowner rehabilitation program, the environmental review factors under consideration are those that can be addressed without knowing a particular site or sites. The initial review should lay out the specific conditions that must be met for providing assistance to an individual property in the project area, or specific procedures to be followed if a particular property does not meet the conditions.

The comment periods are absolutely critical in order to complete the environmental review correctly. The grantee must allow a minimum of seven days for public comment concerning the notice of intent. This seven-day period starts from the day the notice is published. After the seven days, and taking into account any comments received, the grantee then submits a Request for Release of Funds and Certification (**Exhibit 2-P**) to MDOC along with all of the completed ERR documents. MDOC cannot take action on the RROF until 15 days after receipt from the grantee. Upon approval by MDOC (after the 15 days and taking into account any comments received), the environmental review is complete and the project may proceed.

Required Exhibits:

Exhibits 2-A, 2-B, 2-D, 2-E, and 2-G

Once scattered sites are known: 2-M2

If laws are triggered for historic properties: 2-H and 2-I

If laws are triggered for wetlands/floodplains: 2-J, 2-K, and 2-L

If publishing: 2-N, 2-O, and 2-P

3. Categorical Exclusions Converted to Exempt Activities

Activities that are listed above as Categorical Exclusions subject to §58.5 may be converted into exempt activities if the RE concludes that no circumstances exist where any of the federal laws and authorities listed in §58.5 are relevant. The RE must document its conclusions on the **Exhibit 2-B** and include it in the Environmental Review Record (**Exhibit 2-A**). No notices are published and no RROF is submitted to MDOC.

Contact your HOME Program Officer if you are conducting an environmental review for a homeowner rehabilitation program and meet the criteria for conversion to an exempt activity. A Grantee may wish to publish up front and make a determination that the entire project (the homeowner rehabilitation program) is not an action that will result in a significant impact on the quality of the human environment within the area served by the project. When specific sites are identified following completion of an environmental review, a site-specific checklist (**Exhibit 2-M2**) must be completed for each site. If a grantee chooses not to publish up front and a federal law or authority on **Exhibit 2-M2** is later triggered, the grantee must publish at the time the law is triggered. This may become costly to the grantee because it must publish for every individual housing unit that requires a compliance action.

Required Exhibits:

Exhibits 2-A, 2-D, 2-E, and 2-G.

Homebuyer Assistance also requires Exhibit 2-M1.

4. Environmental Assessment (EA)

Activities which cannot be determined to be exempt under §58.34 or categorically excluded from NEPA under §58.35(a) or §58.35(b), or which involve a categorical exclusion with “extraordinary circumstances” as defined under §58.2(a)(3), require that a full Environmental Assessment be conducted (per §58.36). Contact your HOME Program Officer if you are preparing an environmental assessment.

While an EA addresses the same issues as those found in a review of §58.35 laws and authorities, it also includes the following analysis:

- 1) determines existing conditions
- 2) identifies, analyzes and evaluates all potential environmental impacts
- 3) examines and recommends feasible ways to eliminate or minimize adverse environmental impacts
- 4) examines alternatives to the project
- 5) includes a compliance determination for all other Federal laws and authorities cited in §58.5 and §58.6
- 6) leads to an RE’s Finding of No Significant Impact (FONSI), or a Finding of Significant Impact (FOSI) that requires the execution of an Environmental Impact Statement (EIS).

An EA, using an Environmental Assessment Format (a sample EA format is provided in **Exhibit 2-Q**), is normally required for five or more units only if the sites are 2,000 feet apart or less and/or there are more than four units on a site. This includes:

- 1) **Multi-Family Major Rehabilitation** where the unit density is changed by more than 20 percent, there is change in land use (**Conversion**), or the estimated cost is 75 percent or greater of the total estimated cost of replacement after rehabilitation.
- 2) **Multi-Family New Construction**, i.e. five or more residential units.
- 3) **Single-Family New Construction** if the project involves five or more units on scattered sites less than 2,000 feet apart, or more than four units on any one site.
- 4) **Acquisition** if the project involves five or more units on scattered sites less than 2,000 feet apart, or more than four units on any one site.
- 5) **Conversion** of a land use (non-residential to residential, or vice versa).
- 6) **Infrastructure for HOME Projects** involving a change in use, size capacity or location, or change in character of the site.

Exhibit 2-Q provides a sample environmental assessment. The completion of the EA will normally result in a finding of no significant impact (FONSI). The FONSI occurs when the grantee determines that the project is not an action that will significantly affect the quality of the human environment. The FONSI notice must be published at least once in a newspaper with general circulation in the affected community and may be published simultaneously with the NOI/RROF. If the area is not served by regularly published, local or area-wide newspapers, the FONSI will be prominently displayed at the local post office and its substations. See **Exhibit 2-R** for a sample “combined notice”. A copy of the combined notice must be sent to the agencies listed in **Exhibit 2-O**, and agency comments addressed/included in the ERR.

The public must be afforded a minimum 7-day public comment period for the NOI/RROF, and a minimum of 15 days for the FONSI. If a combined notice is used, both waiting periods will be a minimum of 15 days. If the project is unique, without precedent, or controversial, the comment periods may be extended to 30 days each.

In the event that a Finding of Significant Impact (FOSI) is made, the RE must initiate an Environmental Impact Statement (EIS) in accordance with Subparts F and G of Part §58.

At minimum, the required exhibits for a project requiring an EA are:

Exhibits 2-A, 2-D, 2-E, 2-O, 2-P, 2-Q, and 2-R

5. Environmental Impact Statement (EIS)

An Environmental Impact Statement (EIS) is required when an environmental assessment indicates that a proposed project or activity will significantly impact the human environment. Because it is unlikely that any HOME activity will trigger an EIS, this discussion will be limited. In the event a Grantee finds itself involved with this level of review, it should contact the HOME Program staff immediately.

D. RE-EVALUATIONS

After completion of the original environmental review process, circumstances may require that the original review be reevaluated. This will occur when:

- 1) substantial changes to the project are proposed;
- 2) new circumstances and/or environmental conditions that may affect the project or have a bearing on its impact are discovered during the implementation of the project;
- 3) new activities not evaluated in the original review are proposed; or
- 4) an activity is proposed that was evaluated in the original environmental review, but five years have elapsed since the date the review was approved.

Environmental reviews must be conducted for activities funded by program income and/or CHDO proceeds. Reinvestment of program income and/or CHDO proceeds within five years of the date of approval (issuance of the Release of Funds) does not require a new environmental review if the activity falls within the scope of the environmental review for the HOME project that generated the program income or CHDO proceeds. After five years, a reevaluation of the original environmental review covering the proposed activity will suffice.

Should a revaluation be warranted and the original findings are still valid, the environmental certifying official must affirm the original findings and update the Environmental Review Record with the reevaluation. A statement addressing the above four points will suffice as documentation that a reevaluation has been conducted. A new FONSI notice is not required.

If the environmental certifying official determines that the original findings are no longer valid, a new environmental review must be prepared. A new FONSI notice (if required for the activity type) must be published/disseminated and be submitted to MDOC.

E. PROJECTS WITH COMBINED HUD SOURCES

Where HOME funds are being added to a previously approved HUD-assisted project, a second environmental review is not always necessary. If the project's scope is unchanged, and an analysis of the original review indicates that conditions have not changed and all relevant factors have been considered, the Grantee may adopt the prior review with or without modifications. A FONSI (if the original ERR led to one) and an NOI/RROF would still need to be published based on the reassessment of the original environmental review, and a Release of Funds would need to be obtained from MDOC.

If the scope of the project has changed, a new environmental review must be done which takes into account the impact of the new factors. Information from the original environmental review that is relevant may be referenced or included but may not be used without additional analysis of changes in the program.

If there was no environmental review done previously on an on-going project, an environmental review is required before any HOME funds may be committed.

F. AGGREGATION

The RE must group together and evaluate as a single project all individual activities which are related on a geographic basis (i.e. site specific) or a functional basis (i.e. activity specific), are logical parts of a larger project, are funded by several Federal programs, or are partly funded with non-Federal resources. The purpose of aggregation is to reduce the number of individual reviews by analyzing the impacts of the "entire" proposed activity.

III. OTHER ENVIRONMENTAL ISSUES

A. LEAD-BASED PAINT

Many homes and apartments built before 1978 have paint that contains lead, which is referred to as lead-based paint (LBP). LBP is defined as paint on surfaces with lead in excess of 1.0 milligram per square centimeter (1.0 mg/cm²) as measured by an x-ray fluorescence detector, or 0.5 percent by weight.

Lead from paint, chips and dust can pose serious health hazards if not addressed properly. Children under six years and pregnant women are particularly at risk. Lead exposure among pregnant women can cause premature birth, low birth weight, or miscarriages. Exposure to lead by children can lead to nervous system damage, learning and speech disabilities, behavioral problems, hearing damage, and decreased physical development. Exposure to lead comes from breathing or swallowing lead dust, or by eating soil or paint chips containing lead.

Due to the serious nature of lead poisoning from exposure to lead-based paint hazards, particularly among children, LBP regulations are fully enforced by MDOC and HUD. If HOME funds are to be spent on a unit or provide assistance to a tenant, compliance requirements must be strictly adhered to so that homebuyers, homeowners and tenants avoid LBP hazards.

Housing that meets one of the following initial exemption criteria is not considered to have a lead-based paint hazard, and is exempt from lead paint regulations:

- 1) Housing built after January 1, 1978 (when lead paint was banned for residential use);
- 2) Housing officially certified as free of lead-based paint by an EPA-certified lead-based paint inspector;

- 3) Housing without deteriorated paint, and not receiving any rehabilitation or improvement that disturbs paint.

Lead-based paint is not considered a hazard if it is in good condition, and it is not on an impact or friction surface, like a window. Deteriorating lead-based paint (peeling, chipping, chalking, cracking or damaged) is a hazard and needs immediate attention. It may also be a hazard when found on surfaces that children can chew or that get a lot of wear-and-tear, such as windows and window sills, doors and door frames, stairs, railings, banisters, and porches.

For housing that has been kept in good repair and upon a visual assessment is determined not to have deteriorated paint, LBP is not considered a hazard. Only a HUD-qualified person may conduct a visual assessment. Grantees wishing to perform the initial visual assessment may take the free on-line training course provided by HUD at the following web address: <http://www.hud.gov/offices/lead/training/visualassessment/h00100.htm>.

1. Single- and Multi-Family Rehabilitation

For housing determined to have paint in good repair, rehabilitation work is not considered to be a hazard if:

- 1) Less than 2 square feet or more of lead-based paint is disturbed in any interior room or space
- 2) Less than 10% of a component with a small surface area is disturbed (such as interior windowsills, baseboards and trim)
- 3) Less than 20 square feet of any painted exterior surface (including siding, windowsills, and gutters).

If there is deteriorated paint and/or one of the above disturbance criteria is exceeded, the lead hazard must be evaluated; then stabilized, reduced, or abated; and finally cleared by an EPA-certified lead-based paint inspector. **Exhibit 2-S1** presents a flowchart for addressing lead-based paint for homeowner rehabilitation programs. Contact your HOME Program Officer for further guidance if necessary.

Different requirements must be followed for LBP mitigation according to the amount of HOME funds spent per unit on rehabilitation activities. **Exhibit 2-S2** provides further guidance on the differing requirements. Note: HUD requires Environmental Protection Agency (EPA) certified personnel to provide LBP risk assessment, LBP abatement services and LBP clearance services for activities that receive more than \$25,000 of HOME rehabilitation assistance per unit. Workers who are not EPA-certified may do the abatement work *if* 1) the workers have completed HUD's one-day *Lead-Safe Work Practices Training*, and 2) an EPA-certified supervisor is at the work site at all times.

Also, if a HOME-assisted unit is occupied by a child age six or under with an identified elevated blood lead level, the unit has the same LBP abatement requirements as a project receiving more than \$25,000 per unit, regardless of the actual amount of HOME assistance.

HUD requires certain notification procedures be followed. If a structure receiving HOME assistance was built before 1978, the owner and/or current or future renters must be informed of the potential LBP risk. Grantees are required to give homeowners and renters the pamphlet titled *Protect Your Family from Lead in Your Home*¹ (**Exhibit 2-U**) and obtain and keep a signed Acknowledgement of Receipt (**Exhibit 2-V**) on file during, and three years beyond, the period of affordability. Additionally, the Grantee must provide firm evidence of LBP compliance in individual participant files. If a grantee conducts an evaluation and hazard reduction activity, HUD requires specific notification procedures. **Exhibit 2-W** provides the following notices:

- 2W1** Notice of Lead-Based Paint Inspection,
- 2W2** Notice of Lead-Based Paint Risk Assessment,
- 2W3** Notice of Lead Hazard Evaluation or Presumption, and
- 2W4** Notice of Lead Hazard Reduction.

2. Single- and Multi-family Acquisition, Homebuyer Assistance, and TBRA

HOME funds may not be used to purchase a property or provide assistance to a family whose home or rental unit has a lead-based paint hazard (i.e. housing with deteriorated paint built before 1978), unless the hazard is controlled through stabilization, interim controls, or abatement. **Exhibit 2-S3** presents a flowchart for addressing lead-based paint for acquisition, homebuyer assistance, and TBRA activities.

Regardless of the housing's state of repair, homeowners and tenants must still be informed of the possible LBP risks if the structure was built before 1978. Before ratification of a contract for housing sale or lease, grantees must provide prospective tenants, homeowners, or purchasers, with all information known regarding the presence of lead-based paint for all structures built before 1978. **Exhibit 2-T** provides sample disclosure forms for homebuyers (**2-T1**) and for renters (**2-T2**). Grantees are also required to give homebuyers and renters the pamphlet, titled *Protect Your Family from Lead in Your Home*¹ (**Exhibit 2-U**) and obtain and keep signed Acknowledgements of Receipt (**Exhibit 2-V**) on file during, and three years beyond, the period of affordability. Homebuyers and tenants are granted 10 calendar days to inspect and assess lead-based paint hazards (at their own expense) before being obligated to purchase or rent the housing.

Again, the Grantee must provide firm evidence of LBP compliance in individual participant files.

3. Supportive Housing, SROs and Zero-Bedroom Dwellings

Housing that falls under one of the following categories is exempt from the lead-based paint regulations:

¹ Bulk copies of the pamphlet are available from the Government Printing Office, which can be reached at (202) 512-1800. The pamphlet can also be printed, in English or Spanish, from the internet at <http://www.hud.gov/offices/lead/leadhelp.cfm>

- 1) Housing exclusively for the elderly
- 2) Housing exclusively for persons with disabilities
- 3) Zero-bedroom dwellings, including efficiency apartments and single-room occupancy housing

If the project falls under one of these categories, contact your HOME Program Officer for additional information and assistance. Rehabilitation activities in supportive, SRO, or zero-bedroom housing must still, at minimum, comply with lead-safe work practice requirements for rehabilitation contractors.

To be housing exclusively for the elderly, the lease or residency agreement should state that the unit is designated exclusively for elderly or persons with disabilities. This exemption does not include owner-occupied single-family housing. The term “housing for the elderly” is defined in the regulations as “retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more.” A person with a disability is defined in the Americans With Disabilities Act (ADA) and the Rehabilitation Act of 1973 as any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of an impairment, or is regarded by others as having such an impairment. It is not necessary that the lease or residency agreement include these precise definitions.

The exemption under this category does not apply to a unit in which a child under the age of 6 years is expected to reside.

B. ASBESTOS

Asbestos is the name for a group of naturally occurring minerals that separate into strong, very fine fibers. Because of its heat resistance and durability, asbestos has been used extensively in construction and industrial applications. In residential applications, asbestos has been used most commonly in materials used for purposes of reinforcement, heat and cold insulation, condensation control, fire protection, sound dampening, decoration, and texturing.

Asbestos is a health concern because it is a carcinogen. Asbestos can break down into very small fibers that can become airborne and stay airborne for a long time. Exposure generally occurs by inhalation or ingestion. Because of their durability, these fibers can remain in the body for many years and thereby become the cause of asbestos-related diseases, such as asbestosis, mesothelioma, and other cancers.

An asbestos containing material (ACM) is any material that contains more than 1% asbestos. “Friable” asbestos materials pose the greatest health risk because of their ability to easily become airborne, and are thus the most regulated ACM. The EPA defines “friability” as the ability of a dry asbestos-containing material to be crumbled, pulverized, or reduced to powder *by hand pressure*. Examples of a friable ACM include thermal system insulation and spray-on fireproofing. ACM such as floor tile, roofing, and asbestos cement products are typically non-friable; however, demolition and renovation activities can often render non-friable ACM friable.

The State of Montana is delegated by EPA to administer sections of the asbestos NESHAP (National Emission Standard for Hazardous Air Pollutants) regulations, through the Montana Department of Environmental Quality's Asbestos Control Program. The Asbestos Control Program regulates "asbestos abatement" activities in buildings where **three (3) or more linear or square feet of friable or *potentially friable* ACM are abated**. According to the Asbestos Control Program, asbestos abatement includes "the removal, encapsulation, enclosure, repair, renovation, demolition, placement, transportation, and/or disposal of friable or *potentially-friable* ACM."

The most likely scenario for asbestos issues in a HOME project is during rehabilitation of a structure. If a HOME project meets the above definition of an "asbestos abatement project", there are certain requirements that must be met:

- Asbestos abatement projects require an inspection by a Montana Accredited Asbestos Inspector prior to renovation or demolition activities.
- All ACM that will be impacted by renovation or demolition activities must be removed before demolition or renovation activities begin.
- Asbestos abatement projects require a permit from the Asbestos Control Program and must be done by persons with a Montana Contractor/Supervisor or Worker accreditation. A list of *Asbestos Consultants/Contractors/Laboratories*, is provided in **Exhibit 2-X** for your use and information.
- The Asbestos Control Program must be notified 10 working days prior to asbestos abatement and demolition activities.

If your HOME project involves any type of asbestos abatement, contact the Asbestos Control Program as soon as possible for further guidance. The Department of Environmental Quality's Asbestos Control Program may be reached at (406) 444-3490. Their web site is www.deq.state.mt.us/pcd/awm/acp.

Another agency having regulatory authority over asbestos abatement projects is the Federal Occupational Safety and Health Administration (OSHA). OSHA regulates worker safety and health as they relate to asbestos in the construction industry. Like the Asbestos Control Program, OSHA's asbestos standard (29 CFR 1926.1101) also requires an asbestos inspection prior to initiating construction activities, as part of its hazard communication requirement. DEQ's Asbestos Control Program regulations have adopted by reference some of OSHA's asbestos regulations; however, for more complete information on OSHA's regulatory and reporting requirements, contact OSHA at (800) 321-6742, or in Billings at (406) 247-7494.

If your HOME project involves any type of asbestos abatement and you are uncertain how to proceed, contact your HOME Program Officer.

C. RADON

Radon is a naturally occurring gas, produced by the breakdown of uranium in soil, rock and water. Air pressure inside a home is usually lower than pressure in the soil around the home's foundation. Because of this difference in pressure, a house can act like a vacuum, drawing radon in through the foundation cracks and other openings. Radon may also be present in well water and can be released into the air in a home when water is used for showering and other household uses. In most cases, however, radon entering a home through water is a small risk compared to radon entering a home from the ground.

The amount of radon in the air is measured in "Pico curies of radon per liter of air," or "pCi/L". The U.S. Congress has set a long-term goal that indoor radon levels be no more than outdoor levels. There are about 0.4 pCi/L of radon normally found in the outside air. The Environmental Protection Agency (EPA) recommends fixing a structure if the results of testing show indoor radon levels at 10 times (4.0 pCi/L) the normal level or higher.

A radon disclosure statement must be provided on at least one document prior to the execution of any contract for purchase of all inhabitable real property. The buyer shall acknowledge receipt of the disclosure statement by signing a copy of the disclosure statement.

If a seller knows the building has been tested for radon gas, the seller must provide a copy of the results of that test and evidence of any subsequent mitigation or treatment. If testing was not accomplished, a statement will appear on the transaction documents stating testing was not accomplished, in addition to a statement about the health hazards caused by the presence of radon.

Other sources of information are available in the form of several booklets produced by EPA. The booklets are available by request from MDOC. The State of Montana's radon contact phone number for general information is (406) 444-6768. **If radon becomes an issue in your HOME project, contact your HOME Program Officer for assistance.**

IV. DEFINITIONS/ABBREVIATIONS

Categorical Exclusion - An activity that does not individually or cumulatively have a significant effect on the human environment and has been found to have no such effect in regulations adopted by HUD (24 CFR § 58.35). In such cases, neither an Environmental Assessment nor an Environmental Impact Statement (EIS) is required. However, categorically excluded projects must comply with non-NEPA requirements. Additional environmental requirements are identified in 24 CFR § 58.5 and include, but are not limited to, analysis of historic properties, floodplain management, and wetland protection.

Clearance (Lead Paint) - An activity conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete. It involves a visual assessment and dust testing by a qualified individual.

Commitment – For purposes of the environmental review process, commitment means the expenditure of private or public funds, or issuance of Release of Funds (ROF) by the State allowing the grantee to expend funds for a HOME-eligible project. HOME funds may not be

used to reimburse project-related costs incurred before approval of the RROF, except for activities that are exempt. A conditional commitment of funds does not constitute a commitment to expend funds.

Conditional HOME commitment – Any contractual agreement between MDOC and the grantee and signed prior to the completion of the environmental review process. This does not provide the grantee legal claim to any amount of HOME funds until the environmental review process is satisfactorily completed.

Environmental Assessment (EA) - A concise public document required under National Environmental Policy Act regulations (24 CFR § 58, Subpart F) that provides sufficient evidence and analysis for determining whether to prepare an EIS or a Finding of No Significant Impact (FONSI). An EA must discuss the need for the proposed project; describe the existing environmental conditions; identify and evaluate all impacts; examine alternatives to the project (where required); recommend feasible mitigations to adverse environmental impacts; provide a compliance determination of applicable authorities in § 58.5 and § 58.6; and include a listing of agencies and persons consulted.

Environmental Impact - Any alteration of existing environmental conditions, or creation of a new set of environmental conditions, caused or induced in whole or in part, directly or indirectly, by a proposed project.

Environmental Impact Statement (EIS) - A detailed written statement as required by § 102 (2)(c) of NEPA describing, analyzing and assessing any alteration of environmental conditions or creation of a new set of environmental conditions, adverse or beneficial, caused or induced by the proposed action and alternatives to the proposed action.

Environmental Review Record (ERR) – This document contains all the relevant documents, public notices, and written determinations required by 24 CFR § 58, and any other information or evidence of action pertaining to the environmental review of the project. The ERR must be available for public review.

Exempt Activity - An activity that is exempt from environmental review requirements under 24 CFR § 58.34.

Finding of No Significant Impact (FONSI) - A document briefly presenting the reasons why an action, not otherwise categorically excluded or exempt, will not have a significant effect on the human environment and for which an Environmental Impact Statement therefore will not be prepared. The FONSI must include the Environmental Assessment (or summary of it) and reference any other environmental documents related to it. If the assessment is included, the FONSI need not repeat any of the discussion in the assessment but may incorporate it by reference.

Human Environment - Interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. This means that economic or social effects are not intended by themselves to require preparation of an EIS. When an EIS is prepared and economic or social and natural or physical environment

effects are interrelated, then the EIS will discuss all of these effects on the human environment.

Lead Hazard Evaluation - A risk assessment, paint testing or a combination of these to determine the presence of lead-based paint hazards or lead-based paint.

Lead Hazard Reduction - Activities designed to reduce or eliminate exposure to lead-based paint hazards through methods including interim controls, standard treatments, or abatement.

NEPA – National Environmental Policy Act of 1969 (U.S. Department of Energy).

NOI/EIS - Notice of Intent to prepare an Environmental Impact Statement.

NOI/RROF - Notice of Intent to Request Release of Funds.

Participating Jurisdiction (PJ) - Any jurisdiction (a state, unit of general local government, or consortium) that has been so designated by HUD in accordance with 24 CFR § 92.105. Insular areas are not considered participating jurisdictions and do not carry the responsibility of performing an environmental review directly. HUD, under 24 CFR § 50, will perform the review for insular areas.

Project - A project, as it pertains to NEPA, is an activity, or group of generally integrally related activities, designed by a grantee or subgrantee to accomplish, in whole or in part, a specific goal. A project in the context of the HOME Program is a site or an entire building, or two or more buildings, together with the site or sites on which the building or buildings is located, that are under common ownership, management, and financing and are to be assisted with HOME funds under commitment by the owner, as a single undertaking under 24 CFR § 92. Project includes all the activities associated with the site and building.

Release of Funds (ROF) – The issuance of the “Authority to Use Funds” form by the State, for activities that require a grantee to submit a Request for Release of Funds and Certification form. An ROF completes the environmental review process.

RROF - Request for Release of Funds and Certification; HUD Form 7015.15 (**Exhibit 2-P**).

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CHAPTER 2

EXHIBITS

- 2-A Sample Environmental Review Record Narrative
- 2-B Consideration of Other Applicable Laws and Authorities
- 2-C Environmental Review Process Flowchart
- 2-D
 1. Designation of Environmental Certifying Official
 2. Sample of Resolution for Designating ECO for HOME Program
 3. Sample Resolution for Designating ECO for All Federal Programs
- 2-E Finding of Exemption for Administrative Activities
- 2-F Environmental Determinations for HOME Activities
- 2-G Finding of Categorical Exclusion
- 2-H Notice to State Historic Preservation Office
- 2-I Historic Preservation Review Process
- 2-J Early Public Notice For Floodplains and/or Wetlands
- 2-K Notice of Explanation for Floodplains and/or Wetlands
- 2-L Eight-Step Decision-Making Process for Floodplains and/or Wetlands
- 2-M
 1. Environmental Site-Specific Checklist for Homebuyer Project
 2. Environmental Site-Specific Checklist for Rehabilitation Projects
- 2-N Notice of Intent to Request Release of Funds (NOI/RROF)
- 2-O Distribution List for NOI/RROF and FONSI/NOI/RROF
- 2-P Request for Release of Funds and Certification (HUD-7015.15)
- 2-Q Consolidated Environmental Assessment Form
- 2-R Sample Public Notice: Combined FONSI and RROF
- 2-S
 1. Lead-based Paint Flowchart for Single- and Multi-Family Rehabilitation
 2. Summary of Requirements for Lead-Based Paint Activities
 3. Lead-based Paint Flowchart for Homebuyer Assistance and TBRA

EXHIBITS (continued)

- 2-T 1. Lead-Based Paint Disclosure Form for Homebuyers
 2. Lead-Based Paint Disclosure Form for Renters

- 2-U Pamphlet: *Protect Your Family from Lead in Your Home*

- 2-V Acknowledgement Statement for Pamphlet Receipt

- 2-W 1. Notice of Lead-Based Paint Inspection
 2. Notice of Lead-Based Paint Risk Assessment
 3. Notice of Lead Hazard Evaluation or Presumption
 4. Notice of Lead Hazard Reduction

- 2-X Asbestos Removal Consultants, Contractors and Laboratories